

## **CHAPTER II**

### **RECOVERY OF ARREARS (CUSTOMS)**

Customs duty is determined in terms of section 15 or section 16 of the Customs Act, 1962 in respect of imported or export goods. If the duty paid / levied is found to be less than due, the importer or exporter is required to pay the short levied / non levied or short paid / non paid amount of duty. In this regard, the Customs Act, 1962 empowers officers to issue a demand cum Show Cause Notice (SCN) for recovery of amount of duty short levied/ non levied from the importer/exporter. The SCN is then adjudicated by the appropriate authority. Any amount recoverable from the importer/exporter due to confirmation of demands in favour of the department by virtue of Orders-in-Original (OIOs), or further Orders-in-Appeal (OIA), Tribunal orders, and Courts' Orders, becomes arrears.

Arrears of revenue arise as a result of the following:-

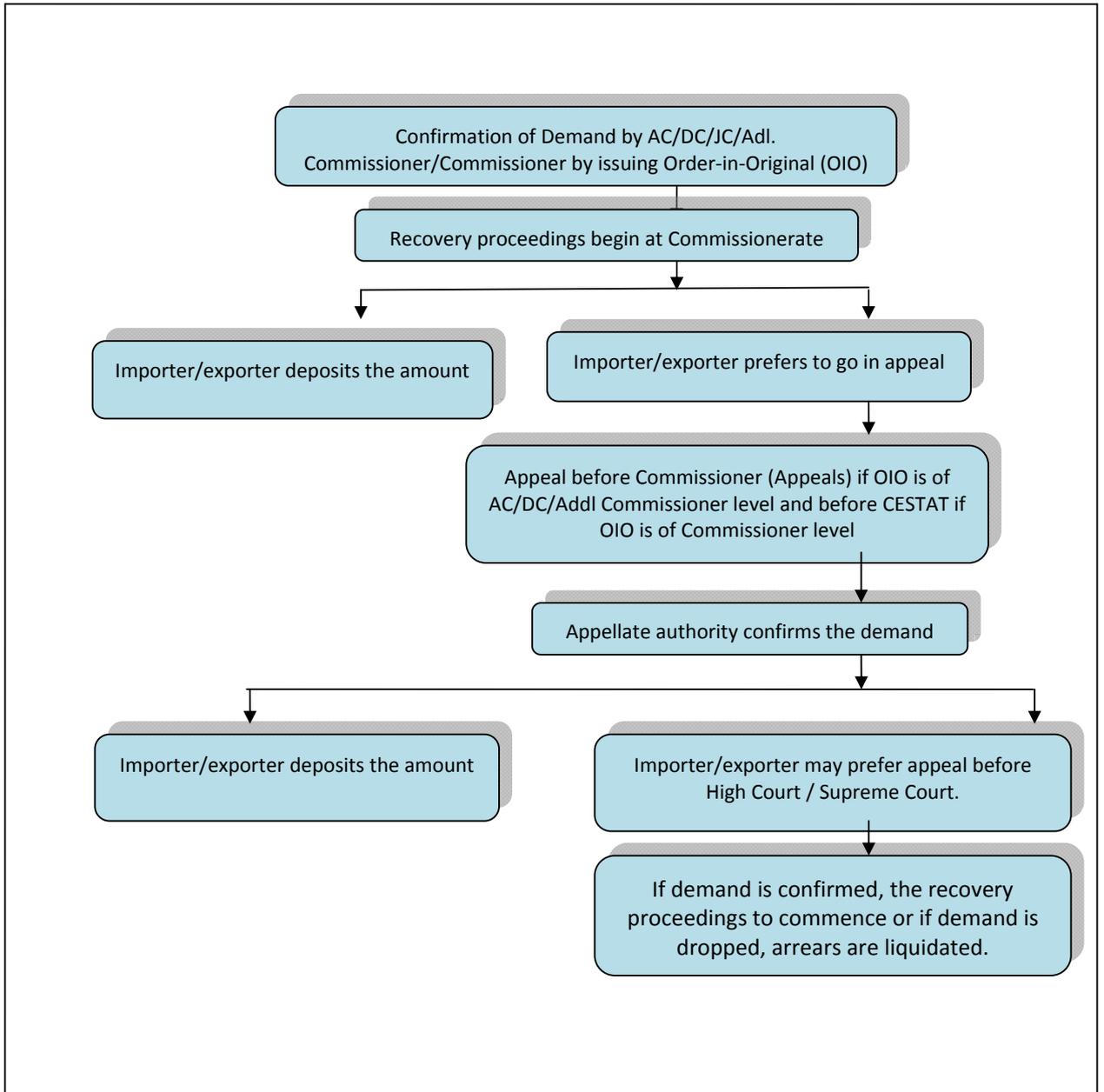
- Confirmation of demands by the adjudicating authority
- Rejection of appeal by the appellate authority
- Grant of stay application with condition of pre-deposits
- Orders in favour of the Department by Tribunals, High Courts and Supreme Court.

#### **2.1 Statutory provisions**

The main statutory provisions dealing with recovery of arrears in Customs are as follows:-

- (i) Section 28 of the Customs Act, 1962 provides for recovery of any duty which has not been levied or has been short levied or erroneously refunded or if any interest payable has not been paid, part paid or erroneously refunded by way of issue of demand and pursuing with the importer/exporter.
- (ii) In case recovery is not effected under section 28, section 142 further empowers department to take coercive actions such as deducting any amount payable to the defaulter, restraining any movable or immovable property or referring the case to district collector for recovery of the dues as if it were an arrear of land revenue.
- (iii) The process of recovery of arrears starts with confirmation of demand against the defaulter importer/exporter and includes a number of appellate forums wherein importer/exporter as well department can go for appeal. The process of recovery of arrears is depicted in following flowchart:

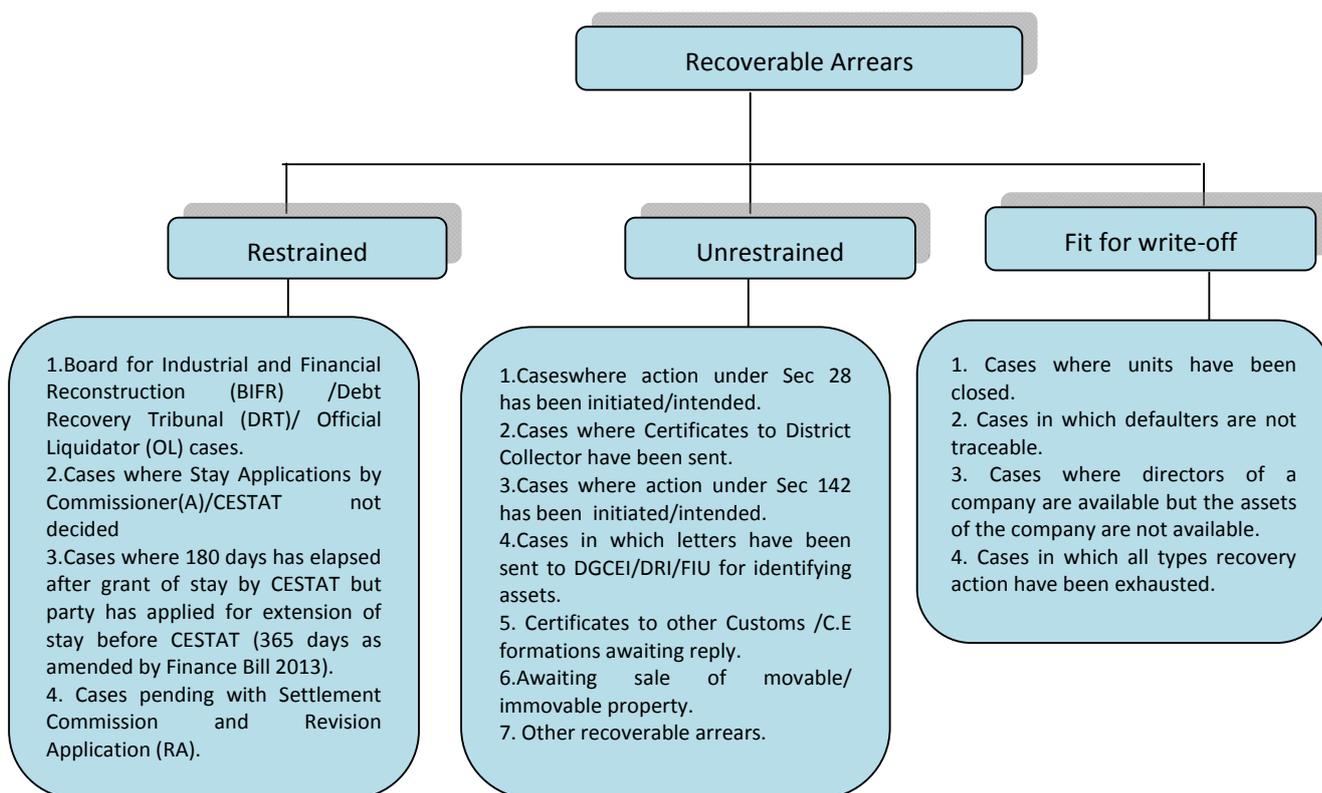
**Chart 1: The process of Recovery of Arrears**



## 2.2 Classification of Arrears

Arrears are classified into two main categories viz. recoverable and irrecoverable arrears. All stayed arrears are irrecoverable. The recoverable arrears are further classified as restrained, unrestrained and fit for write off as explained in Chart 2.

**Chart 2: Classification of arrears**



## 2.3 Organisational Structure

The function of recovery of arrears in CBEC is entrusted to the field formations and is monitored by a centralized task force headed by Chief Commissioner (Tax Arrears Recovery) as detailed below.

### A. Field formations :

- a. **Commissionerates:** Recovery of arrears is the overall responsibility of the jurisdictional Customs commissioners. They are required to review and monitor the functions of recovery cell functioning within the Commissionerate. Besides, they should carry out actions for vacation of stay orders, filing for early hearing of CESTAT/Court matters, taking action for attachment of property of defaulters and follow up of cases pending in Board for Industrial and Financial Reconstruction (BIFR)/Debt Recovery Tribunal (DRT)/Official Liquidator (OL) etc. and watching progress and

performance of Recovery Cell through monthly progress reports and taking follow up action.

- b. **Recovery Cell:** Each Commissionerate has a Recovery Cell whose major functions are to serve notice upon defaulters, attachment and sale of defaulter's property by public auction and to send a monthly progress report to the Chief Commissioner regarding arrears.

#### **B. Chief Commissioner-Centralised Tax Arrears Recovery (TAR)**

The Board constituted a centralized Task force in August 2004 which is headed by Chief Commissioner (Tax Arrears Recovery) stationed at New Delhi with Six Nodal Officers (Tax Arrears Recovery) at Delhi, Mumbai, Kolkata, Chennai, Vadodara and Nagpur. The Task Force is entrusted with the following responsibilities:

- Review of extent of revenue arrears
- Formulation and implementation of strategy for recovery.
- Monitoring the efforts of the Customs field formations.

To augment recovery of revenue arrears, CC (TAR) circulated action plan for recovery of arrears to all the chief commissioners in June 2015. The action plan includes following strategy:-

- a. Scrutiny of all arrears at the Commissionerate level and initiation of all appropriate action.
- b. Where defaulters are not traceable, the Commissionerates should take up the matter with other Departments like income tax, DGFT, Registrar of Companies, Commercial Tax Departments, State Revenue Departments etc. to gather the details movable/immovable property owned by such defaulter and to ensure close follow up and persuasion by seniors officers for recovery of arrears in such cases.
- c. Creation of database for capturing the details of all cases where action under 142 of Customs Act has been initiated.

Since August 2015, function and responsibilities of CC (TAR) have been transferred to Directorate General of Performance Management (DGPM).

#### **2.4 Audit Objectives**

The subject specific compliance audit sought to assess

- i. the extent and nature of arrears of revenue
- ii. the level of compliance with the statutory provisions and the guidelines issued by the department for recovery of dues
- iii. effectiveness of monitoring and internal control mechanism

## 2.5 Audit coverage

Audit examined the records of office of the Chief Commissioner (TAR) Delhi, Nodal Officers (TAR) Mumbai, Nagpur and 31 Commissionerates out of 51 total Commissionerates dealing with Customs, as detailed in **Annexure 3**. The period covered in audit was from 2013-14 to 2015-16.

### Audit Findings

Audit noticed that while revenue arrears have gone up during the period audited (FY 2012-13 to 2015-16), the recovery of dues has declined sharply in this period. A substantial percentage of Commissionerates reported shortfall in meeting recovery targets, which was compounded by instances of delay or non- endorsement of Orders in Original to the recovery cell, insufficient and delay in taking action under section 142 and department's inaction in tracing defaulters. Audit noticed instances of delay in providing information to the appellate authorities and non-monitoring of appeal cases. Among the significant factors contributing to creation of revenue arrears, audit noticed specific issues relating to non-realization of foreign exchange under the duty drawback scheme and incorrect adjudication of cases without ascertaining export obligation discharge certificates.

These observations are discussed in succeeding paragraphs.

## 2.6 Revenue Arrears in Customs

### 2.6.1 Extent of revenue arrears

The extent of revenue arrears of customs and their recovery, during the years 2012-13 to 2014-15, is depicted below.

**Table 2.1: Revenue arrears of Customs during 2012-13 to 2014-15**

(₹ in crore)

Year	Arrears at the end of year	Recovered during year	Stayed	Arrears pending at the end of year		
				Restrained	Un-stayed	
					Recoverable	Unrestrained
2012-13	12103.40	3477.20	5107.36	3485.43	1730.77	1779.84
2013-14	17986.38	3835.71	8290.67	5264.56	2765.00	1666.15
2014-15	14358.64*	949.65	7286.75	2843.07	4173.60	55.22

**Source:** Information provided by Directorate General of Performance Management (DGPM) vide letter C.No. CC (TAR)48/2015-18015 dated 22.2.2016.

\*Discrepancy in the total revenue arrears was noticed in the information provided by DGPM vide letter dated February 2016. Response from the Ministry is awaited.

The revenue arrears of customs has risen from ₹ 12103 crore to ₹ 14359 crore during the year 2012-13 to 2014-15. However, during the same period the recovery of arrears has shown sharp decline of approximately 75 percent from ₹ 3836 crore to ₹ 950 crore.

The revenue arrears of 17 Commissionerates out of 31 selected Commissionerates<sup>11</sup> is given in the table below.

**Table 2.2: Revenue arrears of 17 Commissionerates test checked during 2013-14 to 2015-16**

(₹ in crore)

Year	Arrears at end of the year	Recovered during year	Stayed	Arrears pending at the end of year		
				Restrained	Un-stayed Recoverable	Unrestrained Non-recoverable
2013-14	2354.18	547.50	540.91	1345.49	396.38	97.37
2014-15	3666.96	2361.68	1012.46	2169.31	432.77	95.68
2015-16	3804.32	763.71	787.52	2234.55	678.69	103.73

Source: Information provided by selected Commissionerates to audit

It is observed that the revenue arrears of Customs at the end of the year also rose significantly during 2015-16 as compared to 2013-14 in these Commissionerates. Stayed arrears also increased significantly 2015-16 as compared to 2013-14.

Revenue arrears of 17 commissionerates revealed that:

- In 11 commissionerates, Delhi (Preventive), Kochi, ICD Bengaluru, Mangalore, Goa, Jodhpur, CE Kozhikode, West Bengal (Preventive), Vishakhapatnam, Siliguri (Preventive) and Shillong (Preventive), recovery in 2015-16 decreased in comparison 2013-14.
- In 8 Commissionerates, Delhi (Airport), Hyderabad, CE Trivandrum, Jamnagar, Kochi (Preventive), West Bengal (Preventive), Vishakhapatnam and CE Kozhikode, pendency of revenue arrears in 2015-16 increased by more than 100 percent as compared to 2013-14. Audit noticed a very significant increase in revenue arrears in four Commissionerates viz. CE Trivandrum (755 per cent), West Bengal- Preventive (581 per cent), Kochi- Preventive (458 per cent) and Delhi-Airport (317 per cent). However, in 2 Commissionerates i.e. CE Kochi and Jodhpur pendency of revenue arrears declined.
- In 6 Commissionerates i.e. ICD Bangalore, CE Kochi, CE Trivandrum and Goa during 2014-15, Kochi-Preventive and Shillong Preventive during 2015-16 increase in stayed arrears was more than 100 per cent compared to previous year.
- Revenue arrears of 4 Commissionerates i.e. Preventive (Delhi), Jamnagar, Mangalore and Vishakhapatnam accounted for 63 percent of the total revenue arrears in 17 Commissionerates as on March 2016.

<sup>11</sup>Only 17 commissionerates furnished complete data for the period of audit.

## 2.7 Categories of Arrears

According to the information furnished by the Department, the all- India revenue arrears at the end of March 2015 under various categories was as under:-

Table 2.3:Category-wise all India revenue arrear as on March 2015

(₹.in crore)				
Sl. no.	Category of arrears	No. of cases	March 2015 Amount	Percentage of arrears
1	Restrained Arrears	7947	17087	80.16
2	Unrestrained Arrears	16819	2772	13.00
3	Fit for write-off	8201	1457	6.84
	<b>Grand Total</b>	<b>32967</b>	<b>21316</b>	<b>100</b>

Source: Directorate General of Performance Management vide letter C.No. CC(TAR)48/2015-18015 dated 22.2.2016

As can be seen from the above table, 80 percent of revenue arrears were restrained arrears as on March 2015. This implies that the recovery of these arrears was restrained by the concerned authorities (Appellate authorities/BIFR/Debt Recovery Tribunal/Official Liquidator etc) and that the department should have pursued these cases with these authorities vigorously for an early disposal. The unrestrained arrears locked up at departmental level and fit for write-off cases amounted to ₹ 4229 crore (20 percent). In terms of quantum of cases, maximum number of cases, i.e. 76 percent were in the category of unrestrained arrears.

## 2.8 Age-wise pendency of arrears pending with appellate authorities

The age-wise details of arrears of revenue pending with various appellate authorities as of 31<sup>st</sup> March 2016 furnished by 31selectedCommissionerates were as under:-

Table 2.4:Age-wise pendency of revenue arrears with appellate authority as on March 2016

Appeals pending with	(₹in crore)										Total	
	1 year or below (i)		1 to 2 years (ii)		2 to 5 years (iii)		5 to 10 years (iv)		Above 10 years (v)			
	No.	Amt.	No.	Amt.	No.	Amt.	No.	Amt.	No.	Amt.	No.	Amt.
Supreme court	28	27.63	20	0.01	26	7.55	22	9.52	40	4.16	136	48.87
High court	520	265.47	91	106.21	147	25.31	263	120.12	86	213.67	1107	730.78
CESTAT	699	2567.28	521	1798.45	801	332.59	681	265.76	47	12.04	2749	4976.12
Comms(Appeal)	697	76.94	344	105.31	238	57.85	53	16.3	17	0.49	1349	256.89
JS(RA)	4	0.13	52	3.69	60	2.76	4	0.21	0	0	120	6.79
<b>Total</b>	<b>1948</b>	<b>2937.45</b>	<b>1028</b>	<b>2013.67</b>	<b>1272</b>	<b>426.06</b>	<b>1023</b>	<b>411.91</b>	<b>190</b>	<b>230.36</b>	<b>5461</b>	<b>6019.45</b>

Subtotal for cases above 5 years (iv+v) = 1213 cases (₹ 642.27 crore)

Source: Information provided by selected Commissionerates to audit

As can be seen from the above table, 1213 cases involving revenue arrears of ₹ 642.27 crore (10.67percent) were pending for recovery for more than five years.

## 2.9 Compliance to statutory provisions, rules, procedures and guidelines for recovery of arrears

Recovery of arrears is the overall responsibility of the jurisdictional commissioners. They are required to review and monitor the functions of recovery cell functioning within the Commissionerate. As per the Ministry of Finance circular (1997) circular dated 15/12/1997, a “Recovery Cell” (RC) should be created in each Custom Commissionerate for the purpose of making recovery of Government Dues. Every year recovery targets are fixed for each Commissionerate by CC (TAR)<sup>12</sup>. Following short comings were noticed in the recovery cell.

### 2.9.1 Non Achievement of Recovery Target by recovery cells

On comparison of revenue arrear recovery target vis-a-vis achievement for the years 2013-14, 2014-15 and 2015-16 audit noticed that out of 31 Commissionerates, 14, 18 and 23 Commissionerates respectively, failed to achieve the target fixed by CC(TAR).

**Table 2.5: Summary of Target and Achievement of revenue arrears**

Year	No. of Commissionerates which achieved target	No. of Commissionerates where shortfall noticed	Range of shortfall (in percent)
2013-14	13 <sup>13</sup>	14(52 %)	19-100
2014-15	10 <sup>14</sup>	18(64 %)	23-100
2015-16	8	23(74 %)	7-100

**Source: Information provided by selected Commissionerates to audit**

As can be seen, percentage of Commissionerates that failed to achieve target has risen from 52 percent to 74 percent during 2013-14 to 2015-16.

On being pointed out, Commissionerates stated that targets could not be achieved due to shortage of staff, huge pendency with appellate authority etc. Reply of the Department is not acceptable as target were fixed keeping in view existing manpower. Further, audit scrutiny has revealed several issues where lack of action due to non compliance to the rules and procedures have resulted in arrears accumulation as narrated below.

<sup>12</sup> CC (TAR) letter C.No.CC(TAR) 71/Tech/Budget/2014/4556 Dated 18.6.15

<sup>13</sup> Excludes ICD TKD, Ludhiana, Port Kolkata, ACC Chennai

<sup>14</sup> Excludes ICD TKD, Ludhiana, CE Kochi

### 2.9.2 Non endorsement of Order-In-Originals (O-I-Os) to the Recovery Cell

Order-In-Originals (O-I-Os) should be endorsed to Recovery Cell as soon as the OIOs are passed<sup>15</sup>. The major functions of Recovery Cell are to serve notice upon defaulters, attachment and sale of defaulter's property by public auction and to send a monthly progress report to the Chief Commissioner regarding arrears.

Audit noticed that in seven<sup>16</sup> Commissionerates 110 OIOs involving revenue arrear of ₹ 11.96 crore passed during 2005-2015 were not endorsed to recovery cell.

Non-endorsement of O-I-O to the Recovery Cell not only delayed the recovery process but also exposed lack of coordination within the Commissionerates.

In four<sup>17</sup> Commissionerates (Combined Customs and C. Excise) it was also noticed that though Recovery Cell had been created but the pursuance of cases/upkeep of concerning files was being done at only Divisional level which indicates that the Recovery Cell of the Commissionerates were not fully functional.

### 2.10 Action under section 142 of Customs Act

#### 2.10.1 Non adjustment of refund amount against confirmed demand Section 142(1) (a)

Section 142(1) (a) of the Customs Act provides that where any sum payable by any person is not paid the proper officer may deduct or may require any other officer of customs to deduct the amount so payable from any money owing to such person which may be under the control of the proper officer or such other officer of customs.

In Import II Commissionerate NCH Mumbai, in the case of M/s Uttam Galva Steels Ltd, the Commissioner vide O-I-O dated 30.04.2014 confirmed the differential duty amounting to ₹ 2.23 crore. Though the party requested the Commissionerate (March 2015) to apportion the refund amount of ₹ 2.07 crore against the demand of ₹ 2.68 crore, the department did not apportion the refund amount against the demand till September 2016, thereby discarding an opportunity under section 142 (1)(a) to collect the arrears which remain pending.

#### 2.10.2 Improper issue of detention notices Section 142(1) (b)

Section 142(1)(b) of the Customs Act provides that the Assistant Commissioner of Customs may recover or may require any other officer of customs to

<sup>15</sup> Kolkata Commissionerate Standing Order No.21/92 dated 30 July 1997

<sup>16</sup> Kanpur, Meerut, Noida, Patna, Jodhpur, Bhubaneswar, Hyderabad

<sup>17</sup> Kanpur, Meerut, Noida, Patna

recover the amount so payable by detaining and selling any goods belonging to such person which are under the control of the Assistant Commissioner of Customs.

Audit scrutiny revealed that the detention notices are being issued manually and forwarded to all Chief Commissionerates for action. No details are inserted in the system for prompt action. The detention notices are being issued without details of IEC code, though whole business cycle of import/export/refund/drawback is based on IEC code. No feedback for action taken on detention notice was observed during audit.

Even in cases where notices were issued parties were actively involved in exports after issue of detention notices which implies that customs department had access to their goods and could have taken action for recovery. A few cases are narrated below:

In two Commissionerates viz. ICD TKD (Export) and NCH (Export) Delhi detention notices were issued against seven parties involving revenue arrear amounting to ₹ 26.02 lakh although the parties were exporting through Commissionerates.

Moreover in cases where department had confiscated the goods these were not disposed off for realization of arrears.

In two Commissionerates viz. Trivandrum and Kandla audit noticed that recovery of ₹ 95.34 lakh involving 4 cases was not realised by selling confiscated goods even after a lapse of four to eleven years and goods were allowed to become obsolete whereas they could be auctioned as per procedure to compensate for arrears. Insufficient action by the department led to further delay in recovery.

Lack of action under section 142(1) (b) by department resulted in non-recovery/accumulation of arrears.

On being pointed out, NCH (Export) authorities issued (September 2016) alert in Export module in respect of four cases and replied that alert had been removed in two cases due to filing of appeal by party.

Chief Commissioner (NCH) New Delhi further stated (November 2016) that audit observation regarding inclusion of IEC code as well in the detention notices has been noted for strict compliance and defaulters having IEC number against whom arrears are pending are being monitored through e-BRC module as well. In majority of cases where detention notices have been issued, alerts have been inserted in the EDI system and these cases are being pursued on priority. Further progress is awaited (January 2017).

### 2.10.3 Improper certificate action under section 142 (1) (c)

Section 142(1) (c) of the Customs Act provides that if- the amount cannot be recovered from such person in the manner provided in clause (a) or clause (b) certificate action should be taken through the district authorities/jurisdictional commissioner of customs/Central excise.

Audit scrutiny of 25<sup>18</sup> Commissionerates revealed that in 422 cases of revenue arrear involving ₹ 240.70 crore although no appeal was filed by the party but certificate action was not taken.

Out of 422 cases detention notices were issued by the Department in 52 cases involving revenue arrear of ₹ 13.34 crore but there was time lag of 1-3 years in 39 cases, 3-6 years in 10 cases and above 6 years in 3 cases from date of issue of O-I-O.

Similarly, although certification action was taken in 15 cases involving revenue arrear of ₹ 13.27 crore, time lag of 1-3 years in 12 cases, 3-6 years in 2 cases and above 6 years in 1 case was noticed from date of issue of O-I-O.

In the absence of time frame, no uniformity was observed by audit in issue of notices/letters to party for deposit of government dues. Even detention notices and/or certificates were issued by the Commissionerates without following any timeframe.

Kandla Commissionerate reported (November 2016) that the demand was set aside by the Commissioner (Appeal) in one case, in another case matter is under stay while recovery of ₹ 7.60 lakh was made in one case. In remaining cases wherever the appeal period is over letters have been written to party for payment of government dues. Further progress is awaited (January 2017).

### 2.11 Tracing of defaulters and arrears to be written-off

Ministry constituted (August 2004) a Centralised Task Force to co-ordinate, facilitate, monitor and oversee the efforts of the field formations towards recovery of arrears (circular 55/2004 dated 19.8.2004) which envisages that the Commissioners will complete enquiries at all known addresses of the defaulters to ascertain whether any moveable or immovable assets can be located. Discreet investigation would be made from the neighboring persons, trade rivals and other concerned Govt. departments whether any other place of business of the defaulter anywhere in India exists or about Bank accounts etc for extended action to such place.

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<sup>18</sup>ACC Bangalore, Delhi-NCH(Export), ACC-Mumbai, Ahmedabad, AIU Kolkata, chennaisea,Goa, ICD Bangalore, ICD-TKD (Export), IGI delhi, Import-II Mumbai, Jaipur, Jodhpur, Kandla, Kanpur, Kochi, Lucknow-Preventive, Manglore, Meerut, Noida, Patna, Preventive-WB, Preventive-Delhi, Trivandrum and Tuticorin

Board vide letter F.No. 296/34/2008-CX-9 dated 20.03.2008 circulated procedures that had to be followed with respect to recovery of arrears which have become difficult to recover.

Action plan circulated by Chief Commissioner (TAR) in June 2015 also stressed for taking up the matter with other departments to ensure recovery from defaulters.

Audit, however, noticed following shortcomings in compliance to these instructions:-

### **2.11.1 Inaction by the department to trace out defaulters**

Audit noticed that in contravention of above instructions, action was not taken by the Commissionerates to trace out defaulters. Few cases are narrated below.

Test check in 23<sup>19</sup> Commissionerates, revealed that out of 330 cases of “defaulter not traceable” involving revenue arrear of ₹ 261.44 crore, in 258 cases involving revenue arrear of ₹ 223.35 crore either no physical verification to ascertain ownership of property was done or details of such physical verifications were not made available in the file to audit.

Only Kanpur Commissionerate wrote letters to various agencies for ascertaining movable and immovable property of the parties. Rest of the 22 Commissionerates either referred the matter only to few agencies or did not refer to any agency at all.

In two Commissionerates viz. Patna and JNCH Mumbai audit noticed that even arrear files of 39 cases involving revenue arrear of ₹ 1.07 crore were not traceable. Of these, 30 cases pertained to period 1975 to 1984. As substantial time have passed from the date of adjudication there is bleak chance of recovery of arrear resulting into loss to the government revenue.

Audit noticed that there is no set time frame/guideline for referring the matter to various agencies, ascertaining ownership of goods, physical verification of premises, putting the IEC on alert, integrating other agencies like DGFT, bank, post office, trade association for ensuring timely recovery. Thus absence of set time frame and lack of action by Commissionerates resulted in non-recovery of arrears.

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<sup>19</sup>Delhi-NCH(Export), ACC-Mumbai,ACC-Bangalore, chennai sea, Goa, Hyderabad, ICD Bangalore, ICD-TKD (Export), Jodhpur, Kandla, Kanpur, Kochi, Lucknow-Preventive, Kolkata-Airport, Kolkata-Port, Ludhiana, Mangalore, Meerut, Preventive-Delhi, Trivandrum, Tuticorin and vishakhapatnam

### 2.11.2 Non filing of application before Debt Recovery Tribunal against the defaulter

In Kochi Commissionerate audit observed that the case against M/s. K.K. Impex, Aluva was adjudicated vide Order in Original No.3/2011 dated 3 May 2011 confirming duty of ₹ 2.11 crore and penalty of ₹ 2.11 crore and ₹ 50 lakh to sole proprietor.

After litigation, action under Section 142(1) (C) (ii) was started against the defaulter on 13 January 2015. Meanwhile, the defaulter closed the company. United Bank of India, Ernakulum branch had attached the properties of the firms and filed original application before Debt Recovery Tribunal at Ernakulum. As the properties of the company had been attached, the Department had failed to file application before Debt Recovery Tribunal for recovery of arrears.

Department replied that an office note was forwarded to legal section for obtaining legal opinion in the case.

### 2.11.3 Non constitution of committee for write-off

Board Circular 946/07/2011 dated 1.6.2011 stipulated that a three- member Committee of Chief Commissioners and Commissioners shall be constituted to examine the proposals for write-off of irrecoverable arrears and recommend deserving cases to the competent authority in terms of Delegated financial powers (Board's Circular dated 21.9.1990).

On comparison of total revenue arrear vis-a-vis fit for write off cases in 31 Commissionerates test checked, it was observed that during the year 2013-14, 2014-15 and 2015-16, cases fit for write off had identified as 821, 770 and 971 respectively. However, no case was written off during the above period. Even the committee for write off as required by CBEC circular ibid was not constituted by these Commissionerates.

**Table 2.6: Summary of revenue arrears fit for write off**

Year	No. of Comms.		Revenue arrear in these Comms.	Fit for write off			Percentage of total revenue of arrear cases
		No.	Amount (₹. in lakh)	Cases fit for write off	Amount (₹. in lakh)	%age	
2013-14	10 <sup>20</sup>	3250	208753.50	821	9735.59	25.26 %	5.7 %
2014-15	11 <sup>21</sup>	5801	264898.1	770	9568	13.27 %	3.61 %

<sup>20</sup> Delhi-Preventive, Mangalore, Jamnagar, Jodhpur, Kochi, Kochi-Preventive, CE Trivandrum, Vishakhapatnam, Siliguri-Preventive, Goa

<sup>21</sup> Delhi-Preventive, Delhi-Airport, Mangalore, Jodhpur, Kochi, Kochi-Preventive, CE Trivandrum, Hyderabad, Vishakhapatnam, Siliguri-Preventive, Shillong-Preventive

Year	No. of Comms.		Revenue arrear in these Comms.	Fit for write off			Percentage of total revenue of arrear cases
2015-16	13 <sup>22</sup>	10437	378752.5	971	14988.02	9.30 %	3.96 %

Source: Information provided by selected Commissionerates to audit

On this being pointing out, Customs Commissionerate, Kochi, Trivandrum and Mangalore accepted that no committee has been constituted to write off revenue arrears.

Chief Commissioner, NCH, New Delhi stated (November 2016) that committees have now been constituted to examine the proposals for write off of irrecoverable tax arrears. Further progress is awaited (January 2017).

Reply from other Commissionerates is awaited.

## 2.12 Appeal cases

As per standard operating procedures (SOP) (November 2015) on litigation in appellate forums, the details and information called for by the appellate authority should be furnished at the earliest. The appeals should be followed up and the Department effectively represented at every hearing/stage.

In contravention of above instructions, shortcomings noticed are narrated below.

### 2.12.1 Delay in furnishing details to appellate authority

In five<sup>23</sup> Commissionerates, audit noticed the department submitted the details belatedly called for by the Commissioner (Appeal)/CESTAT and in respect of one case no detail was furnished. Kochi Commissionerate replied that delay in one case was on account of voluminous documentation.

### 2.12.2 Bunching of cases

According to Board's circular no. 55/2004 dated 19.8.2004, Chief Departmental Representatives (CDR) should organize bunching of cases on same issues involving substantial revenue and request the Tribunal for disposal on priority.

In contravention of aforesaid provision, in two Commissionerates (Tuticorin, Ahmedabad) no bunching of similar cases pending with CESTAT was noticed. In Tuticorin Commissionerate, it was observed that there are 48 cases with revenue arrears of ₹ 4.45 crore pending with CESTAT, However, the Department had not taken any action to bunch these cases for disposal on priority basis.

<sup>22</sup> Delhi-Preventive, Delhi-Airport, ICD-TKD, Mangalore, Jodhpur, Kochi, Kochi-Preventive, CE Trivandrum, Hyderabad, Vishakhapatnam, Siliguri-Preventive, Shillong-Preventive, WB-Preventive

<sup>23</sup> ACC Mumbai, Chennai-sea, JNCH, Kochi and Trivandrum

On this being pointed out, the Tuticorin Commissionerate replied that (July 2016) bunching of cases would be carried out.

### **2.12.3 Non adherence of provision under section 128A (3) while issue of de novo orders by Commissioner (Appeals)**

Through an amendment of Section 128(3) of Custom Act w.e.f. 11 May 2001, the Commissioner (Appeals) may no longer refer the case back to adjudicating authority for fresh adjudication (de novo) or decision.

Audit noticed that Commissioner of customs (Appeal), Mumbai had issued order of *de novo* in 38<sup>24</sup> cases during 2015-16 against the above provision. This had not only further delayed the adjudication but also increased pendency of revenue arrears.

### **2.12.4 Short payment of pre-deposit in appeal cases**

Section 129 E of the Customs Act 1962 provides for mandatory pre-deposit as a percentage of the duty demanded and or penalty levied while filing appeal at the following rate:-

- An appeal filed before the Commissioner (Appeal) pre-deposit @ 7.5 percent of the duty and/or penalty
- An appeal filed before the Tribunal pre-deposit @ 10 percent of the duty and/or penalty.

In three Commissionerates<sup>25</sup> audit noticed that appeal was filed in 34 cases during 2014 without mandatory deposit at the rate of 7.5 percent/10 percent while filing appeal in Commissioner (Appeal)/ CESTAT, thereby resulting in short payment of pre-deposit amounting to ₹ 33.19 lakh.

### **2.12.5 Irregular use of Cenvat credit for payment of pre deposit in appeal cases**

Cenvat Credit rules 2004 provides that the CENVAT credit may be utilized for payment of –

- a) any duty of excise on any final product; or
- b) an amount equal to CENVAT credit taken on inputs if such inputs are removed as such or after being partially processed; or
- c) an amount equal to the CENVAT credit taken on capital goods if such capital goods are removed as such; or
- d) an amount under sub rule (2) of rule 16 of Central Excise Rules, 2002; or

<sup>24</sup> As per MPR of March 2016

<sup>25</sup> Chennai-sea, , Jodhpur, Ludhiana

e) service tax on any output service.

In two appeal cases<sup>26</sup>, audit noticed that Commissioner (Appeal) Chandigarh irregularly debited cenvat credit against pre-deposit of ₹. 0.34 lakh. Utilisation of cenvat credit under Cenvat Credit Rules, 2004 do not include adjustment of credit against mandatory pre-deposit.

Reply of the department is awaited.

## **2.13 Monitoring and Internal control**

### **Monitoring**

#### **2.13.1. Accumulation of arrears of ₹ 46.73 crore in drawback cases due to lack of monitoring of foreign exchange realisation**

The Public Account Committee (PAC) had expressed concerns about the lack of action being taken in the case of non-realisation of foreign exchange in respect of consignments exported under the drawback scheme.<sup>27</sup>

Board's circular no. 5/2009 dated 2<sup>nd</sup> February 2009 prescribes for creation of Drawback cell in each Commissionerate for monitoring of remittance of export proceeds. In case of non-realisation of export proceeds within the time prescribed under Foreign Exchange Management Act (FEMA) 1999, drawback has to be recovered as envisaged under Rules 16A of Drawback Rules 1995.

Ministry of Finance vide circular dated 18.1.2011 instructed customs Commissionerates for adjudicating non-realisation of foreign exchange cases in a methodical and time bound manner, for recovery of drawback.

Audit noticed non-compliance of extant provisions/instructions and concerns expressed by PAC in two Commissionerates discussed below:-

Out of 75 cases selected for audit scrutiny at ICD Tughlakabad, audit noticed that in 19 cases involving revenue arrear of ₹ 5.85 crore, issue of notices/adjudication was delayed substantially despite having drawback cell. Of these, delay by the Department in issue of SCN from due date was 1-4 years in 4 cases, 4-8 years in 12 cases and over 8 years in 3 cases.

In Mumbai (ACC-Export), revenue arrear to the tune of ₹ 40.88 crore was pending in 919 cases due to non realisation of foreign exchange in drawback cases and these cases were adjudicated after significant delay.

The cases of non-recovery of drawback were noticed despite MOF instructions (F.No. 609/59/2012-DBK dated 27.11.2015) for methodical, time bound and

<sup>26</sup>OIO no. 29/ICD/ADC/LDH/2015 dt 14-05-2015 and 31-33/ICD/ADC/LDH/2015 dt 15-05-2015

<sup>27</sup> PAC Thirteenth Lok Sabha, Sixty First Report and Board Circular F.No. 609/119/2010-DBK dated 18 January 2011 (Sub para 2)

monitored feeding of details of realization/non-realization for achieving complete and effective implementation of the statutory requirement of recovery of drawback with interest in cases of non-realisation of foreign exchange.

### **2.13.2 Adjudication of Advance license cases without monitoring the EODC<sup>28</sup> status**

Duty exemption/remission schemes are formulated by DGFT and execution/monitoring of duty remission/exemption schemes are done by Group 7 in Customs Commissionerates.

As per Handbook of Procedure Vol. I, advance licence holders are required to submit export documents to regional licensing authority (RLA) to obtain EODC. EODC issued by RLA is transmitted to customs through post/EDI and also published in the website of DGFT. In case EO is not fulfilled, the importer is required to deposit customs duties with interest.

In ACC Bengaluru and ACC (Export) Delhi, Audit noticed that department adjudicated five cases during 2013-14 for non-fulfillment of export obligation and duty/penalty of ₹ 1 crore was imposed. On cross-checking EODC status of these licences from website of Director General of Foreign Trade (DGFT), Audit noticed that these licenses had already been redeemed and EODC have been issued before adjudication.

Failure in monitoring and taking timely action on EODC received from DGFT combined with lack of co-ordination with Licensing Authority led to unnecessary accumulation of revenue arrears, recovery of which is doubtful. Moreover, unnecessary litigation and burden of appellate authority could have been avoided.

### **2.13.3 Non monitoring of appeal cases**

Ministry circular no. 55/2004 dated 19.8.2004 envisaged Zonal Chief Commissioners would identify all arrears of more than ₹ 1 crore pending before CESTAT where the department has strong case and a reasonable chance of success. The particulars of all such cases would be sent to the concerned Nodal Officer who would regularly monitor all such cases to ensure that, wherever needed, requisite applications are submitted before the competent authorities for out of turn hearing and early decisions and for this purpose he would co-ordinate between the jurisdictional Chief Commissioners and the concerned Chief departmental representative (CDR). The implementation plan would be reviewed every month by the Nodal officer so that any deficiencies or delay is remedied promptly.

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<sup>28</sup> Export Obligation Discharge Certificates

Scrutiny of monthly progress report (MPR) revealed that 14<sup>29</sup> Commissionerates had not been monitoring appeal/stay cases regularly; no action is being taken for early hearing/vacation of stay. In 5<sup>30</sup> Commissionerates, audit noticed that 180 cases which have been disposed off by CESTAT/Commissioner (Appeal) had still been shown as pending in CESTAT.

In Commissioner of Customs (Preventive), Amritsar, it was observed that three cases involving revenue arrear of ₹ 21.50 lakh, stay was granted by CESTAT during 1987 and 1990 and pending even after passage of more than 26 to 29 years.

Department replied that at present there is no functional programme/software available to ascertain the present status of such old cases pending with the various appellants viz. CESTAT etc.

In Noida Commissionerates, Audit noticed that parties were asked to furnish current status of the appeal cases. This indicates that Department has no mechanism to know updated position of appealed cases.

In Goa Commissionerate, audit scrutiny revealed that the department had filed miscellaneous application in CESTAT in March 2016 for withdrawal of Departmental Appeal, though CESTAT has already decided the case in November 2015. This reflects that the department is not aware of the CESTAT Order issued in November 2015.

## **2.14 Internal control**

### **2.14.1 Non maintenance of data base/records for payment of pre deposit**

As per Circular No. 993/17/14-CX dated 5 January 2015, Review cell of each commissionerates had to maintain data of record of pre-deposit made in the proforma prescribed.

Audit noticed that in 20<sup>31</sup> Commissionerates out of 31 selected for audit, database of pre-deposit made is not being maintained.

CE & Customs Commissionerate, Trivandrum replied that the records of Pre-deposit paid are kept with the Commissioner (Appeals). Reply is not acceptable as Commissionerates are also required to keep database of pre-deposit made.

ACC Mumbai replied that the register is being maintained w.e.f. January 2015. However, Audit noticed that register is not being maintained as per circular. Ludhiana Commissionerate replied (May 2016) that the Commissionerate has

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<sup>29</sup> Ahmedabad, Bhubaneswar, Chennai Sea, Goa, Hyderabad, Jodhpur, JNCH, Kochi, Meerut, Mumbai (Import-II, Export), Noida, Tuticorin, Vishakhapatnam,

<sup>30</sup> ACC Bengaluru, Chennai(6+6), ICD Bengaluru, Mangalore (121) and Tuticorin (6+41),

<sup>31</sup> Ahmadabad, ACC Bengalore, Delhi (Preventive, Airport, NCH-Export, ICD(Export)-TKD), Goa, ICD, Bengalore, Jodhpur, Kandla, Kochi, Kolkata Port and Kolkata Airport, Ludhiana, Mangalore, Mumbai (Import-II, JNCH), Noida and Trivandrum,

started maintaining a database of record of pre-deposits deposited by various appellants w.e.f 18<sup>th</sup> May 2016 taking into account the records generated from January 2016 onwards and the process of updation of the same is also in progress.

In the absence of non-maintenance of separate register/database for pre-deposits, Audit was unable to ascertain that whether all the appellants deposited the requisite amount of pre-deposits.

#### **2.14.2 Mis-reporting in Monthly Progress Report furnished to Ministry/Board.**

Consolidated figures of revenue arrears under various categories were reported to the Ministry/Board through MPR. Test check however, revealed that 740 cases involving revenue arrear of ₹ 1296.52 crore in 13 Commissionerates were not reported (including 4 cases of over-reporting) in the MPR furnished to the Ministry/Board, thereby raising doubts about reliability of reporting system.

- In Kandla Commissionerate, audit noticed huge variation in the figure provided to audit and reflected in the MPR for the period 2013-14 to 2015-16.
- In Ahmedabad, Kandla, Jodhpur, Mumbai (Import-II, ACC, JNCH) and Goa Commissionerates audit noticed that recovery register is not being maintained/ updated regularly.
- Difference was noticed in different statements of MPR in Patna Commissionerate.
- Six Commissionerates<sup>32</sup> under Delhi zone reported 231 cases involving ₹ 173.37 crore in MPR as pending with Commissioner (Appeal). However, corresponding figure as reported by Commissioner (Appeal) was 1710 cases involving ₹ 185.62 crore. Thus, there was a significant difference of 1479 cases involving ₹ 12.25 crore. It also reflects communication gap within zone.
- Export Commissionerate, Mumbai informed (2015) commissioner (TAR) that 1045<sup>33</sup> cases amounting to ₹ 44.18 crore were 'fit for write off'. However, no case was shown as 'fit for write off ' in the MPR of March 2016 by the Commissionerate.

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<sup>32</sup> Delhi-Preventive, NCH-Import Delhi, ICD-TKD(Import),ICD-TKD(Export), ICD PPG, Airport-Delhi

<sup>33</sup> As per letter to Commissioner (TAR)

## 2.15 Conclusion

Arrears of revenue in Customs have jumped by almost 50 percent but the recovery of arrears is not being given due importance despite the mounting arrears. Recovery of revenue arrears locked up in the restrained category amounted to the bulk of arrear, which implies that the department should have pursued these cases with the concerned authorities. Special institutional arrangement like creation of Recovery Cell and Task force have not made any significant impact on improving the extent of recovery of revenue arrears. In fact in some of the Commissionerates these arrears have increased manifold during the three year period covered in audit.

Elaborate instructions of the Board regarding monitoring of arrears, taking effective steps like requesting for early disposal, bunching of cases and prompt action on tracing of defaulters and finalization of appeals or vacation of stay to safeguard government revenue are not being complied with.

Audit, from test check of 31 commissionerates noticed issues worth ₹ 566 crore along with issues of systemic and internal control deficiencies involving revenue of ₹ 1297 crore. Accumulation of arrears due to non-monitoring of drawback cases, incorrect adjudication of Advance license cases without monitoring the EODC status and deficiencies in the monthly reports being submitted by the field formations are symptoms of an unreliable monitoring and internal control system.